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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Civil Revision No.7389 of 2018
Date of Decision: 07.01.2019**

SITA RANI

.....Petitioner

Vs

**PUNJAB STATE POWER CORPORATION LTD & ORS.
....Respondents**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sandeep Verma, Advocate
for the petitioner.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed the order dated 24.09.2018 passed by the Civil Judge (Jr. Divn.) Ludhiana, vide which an application under Order 39 Rules 1 and 2 CPC was dismissed.

[2]. Notice of motion was issued on 30.10.2018. As per office report, respondents have been served through Charanjit Singh IDC and Bhupinder Singh, Clerk. However, there is no representation on behalf of the respondents. As per memo of parties, all the respondents have been impleaded through different officers of the same Corporation.

[3]. Perusal of the impugned order would show that the application under Order 39 Rules 1 and 2 CPC was dismissed

on the ground of non-maintainability of the suit as the plaintiff was required to approach Departmental Dispute Settlement Committee and then she could have availed her remedy before the civil Court. The plaint was ordered to be returned to the plaintiff to first avail the remedy before the appropriate authority under the Electricity Act and then to approach the competent civil Court.

[4]. Learned counsel for the petitioner submitted that the defendants never filed any application under Order 7 Rules 10 and 11 CPC at any point of time and the impugned order cannot be extended to entertain any prayer in terms of Order 7 Rule 10 CPC. The trial Court was required to decide the application under Order 39 Rules 1 and 2 CPC in accordance with law. The trial Court has virtually gone beyond its jurisdiction while entertaining the unclaimed relief on behalf of the defendants.

[5]. Learned counsel further submitted that the issue of jurisdiction could have been decided by the trial Court at the appropriate stage. In the absence of any application under Order 7 Rule 10 and 11 CPC, no such prayer could be appreciated by the trial Court, that too in the application under Order 39 Rules 1 and 2 CPC.

[6]. I have considered the submissions made by learned counsel for the petitioner.

[7]. In my considered opinion, the impugned order needs to be revisited by the trial Court in accordance with law. No application was ever filed by the defendants under Order 7 Rule 10 or 11 CPC. Question of jurisdiction requires leading of evidence at an appropriate stage. Prayer in terms of Order 39 Rules 1 and 2 CPC ought to have been decided by the trial Court in accordance with law.

[8]. In view of above, the impugned order dated 24.09.2018 passed by the Civil Judge (Jr. Divn.) Ludhiana is set aside and the present revision petition is disposed of. The trial Court is directed to decide the application under Order 39 Rules 1 and 2 CPC in accordance with law.

January 07, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No